

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

HARRY WILEY, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Case No: 2:25-cv-00227

ROBERT F. KENNEDY, JR., in his official
Capacity as Secretary of Health and Human
Services, and U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendants.

DEFENDANTS' MOTION TO DISMISS

Pursuant to the Article III of the United States Constitution and Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendants, by and through undersigned counsel, move for dismissal of this civil action for the following reasons:

1. Plaintiff brings claims challenging the Coal Workers' Health Surveillance Program's ("CWHSP's") failure to adjudicate a radiographic image of his chest sent in November 2024.
2. All Plaintiffs' other claims are derivative from that initial allegation.
3. Plaintiff's chest computed tomography ("CT") scan was uploaded into the CWHSP's system for review on December 6, 2024.
4. The CT scan was evaluated by Robert J. Tallaksen, MD, Senior Consultant Fellow, Respiratory Health Division, National Institute for Occupational Safety and Health ("NIOSH"), a physician qualified to identify pneumoconiosis.

5. Dr. Tallaksen found that Plaintiff's CT scan showed no signs of pneumoconiosis.

6. The CWHSP created a results letter in their database dated December 10, 2024, which stated as follows: "Your CT scan shows NO findings consistent with black lung."

7. That results letter would have been mailed to Plaintiff via first class USPS mail by December 13, 2024.

8. Since that letter was mailed to Plaintiff, the NIOSH facility in Morgantown has not received any additional correspondence from Plaintiff, and nothing remains for HHS to act upon with regard to Plaintiff and the CWHSP.

9. Based on the information in Plaintiff's file with the CWHSP, Plaintiff shows no evidence of pneumoconiosis, and he is not eligible for the Part 90 transfer option.

10. Because the CWHSP adjudicated the other medical examination Plaintiff submitted for review, the injury complained of in the Amended Complaint does not exist.

11. Thus, Plaintiff has no concrete injury.

12. Without a concrete injury, Plaintiff lacks standing under Article III of the United States Constitution to pursue this case.

13. And without standing, this Court lacks subject matter jurisdiction over the above captioned civil matter.

14. Plaintiff also has failed to prove that sovereign immunity has been waived to allow him to pursue his claims against Defendants.

15. This case must be dismissed.

In further support of this Motion, Defendants present the Declaration of Laura E. Reynolds, attached as Exhibit 1 to this Motion. The attachments to that declaration are the subject of a forthcoming Motion to Seal.

Defendants will file a separate memorandum of law that will cite relevant legal authority in further support of this Motion.

Therefore, Defendants request that Plaintiff's Amended Complaint, (ECF No. 10), be dismissed and that this case be removed from the Court's docket. Defendants request such other and further relief as the Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2025, I electronically filed the foregoing **DEFENDANTS' MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system which will send notification to the following CM/ECF participants:

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